No. 11342

In the United States Circuit Court of Appeals for the Ninth Circuit

POLSON LOGGING COMPANY, A CORPORATION, APPELLANT

v.

UNITED STATES OF AMERICA, APPELLEE

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF WASHINGTON, SOUTHERN DIVISION

BRIEF FOR THE UNITED STATES

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CITATIONS

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OPINION BELOW

The district court wrote no opinion.

JURISDICTION

This is a proceeding by the United States to condemn land situated in the Western District of Washington. The district court had jurisdiction under the General Condemnation Act of August 1, 1888, c. 728, 25 Stat. 357, 40 U. S. C., sec. 257. Final judgment on the jury verdict was entered December 19, 1945 (R. 298). Notice of appeal was filed March 18, 1946 (R. 306). The jurisdiction of this Court is invoked under Section 128 of the Judicial Code, as amended, 28 U. S. C., sec. 225 (a).

QUESTIONS PRESENTED

1. Whether the Secretary of Agriculture was authorized to acquire lands for the purpose of a road giving access to the Olympic National Forest.

2. Whether in determining compensation payable upon the taking of lands for such a road, the court correctly excluded evidence of value based upon anticipated removal of timber from the National Forest over such road.

STATUTES INVOLVED

The relevant provisions of the statutes upon which the Government relies as authority for the taking are set out in the Argument as follows: The General Condemnation Act of August 1, 1888, c. 728, 25 Stat. 357, 40 U. S. C. sec. 257, at p. 12, *infra;* the Department of Agriculture Appropriation Act for the fiscal year ending June 30, 1942, Act of July 1, 1941, c. 267, 55 Stat. 408 at p. 15, *infra;* sections 2 and 23a of the Federal Highway Act of November 9, 1921, c. 119, 42 Stat. 212 as amended by the Act of July 13, 1943, c. 236, 57 Stat. 560 at pp. 22–23, *infra;* and the Department of Agriculture Appropriation Act for the fiscal year ending June 30, 1944, Act of July 12, 1943, c. 215, 57 Stat. 392, 415 at p. 24, *infra.*

STATEMENT

On January 21, 1942, the United States instituted these proceedings by filing in the court below a petition for condemnation of a permanent easement for highway purposes over certain lands in Grays Harbor County, Washington (R. 2–12). The petition stated

that the highway was to be used for the administration, protection, development and improvement of the Olympic National Forest, including the transportation of men, supplies and equipment needed for these purposes and of timber removed from the forest (R. 4–5; see also R. 10, 14, 16–17). The lands comprised a 100-foot strip, 11.6 miles in length, containing approximately 140.3 acres (R. 6). The petition declared that the Secretary of Agriculture was authorized to acquire these lands by the Act of June 4, 1897, c. 2, 30 Stat. 34, as amended, 16 U. S. C. secs. 473–482, 551, and the Act of July 1, 1941, c. 267, 55 Stat. 408, 422 (R. 4). At the same time, a declaration of taking was filed (R. 16–18) and the sum of $8,280.00, estimated just compensation, was deposited in the registry of the court (R. 21). And on January 23, 1942, the court entered judgment on the declaration of taking and ordered that possession of the property be delivered to the United States on or before the following February 2 (R. 22–27).

On February 21, 1942, appellant, one of the defendants named in the petition (R. 2–3) moved to vacate the judgment entered on the declaration of taking (R. 32–33) and, on March 30, it filed its demurrer to and motion to dismiss the petition in condemnation (R. 35–37). In each, it asserted that the statutes relied on did not authorize the Secretary of Agriculture to acquire the lands in question. Hearing on these motions was postponed (see R. 37–44) while the parties attempted—unsuccessfully—to negotiate a settlement (R. 143–144, 176–178).

On October 22, 1943, the United States filed an amended petition in condemnation (R. 47–59). It prayed for condemnation of additional lands, so that as a result the entire acreage sought was approximately 288 acres made up of a 100-foot strip 15.52 miles containing 187.63 acres and three tracts, No. 1 containing 1.01 acres (R. 51), No. 2 containing 10 acres (R. 54) and No. 3 containing 90 acres (R. 54). It sought a fee title instead of a permanent easement (R. 57). The uses to which the lands were to be put were in substance the same as those described in the original petition (R. 48–49). And, as in the original petition, the Act of June 4, 1897, c. 2, 30 Stat. 34, as amended, 16 U. S. C. secs. 473–482, 551, and the Act of July 1, 1941, c. 267, 55 Stat. 408, 422, were relied on as authorizing the acquisition. At the same time, a declaration of taking, which conformed to the amended petition, was filed (R. 60–63) and the sum of $688, estimated as the additional amount required for just compensation, was deposited in the registry of the court (R. 62).

On October 25, 1943, and the days following hearings were held upon appellant's motion to vacate the judgment entered on the first declaration of taking and its demurrer to and motion to dismiss the petition in condemnation. At the same time, the United States applied for entry of judgment on its second declaration of taking and appellant moved "to quash and adjudge null and void" the second declaration of taking (see R. 73, 75–76). On November 12, 1943, the court entered an order which recited that the court had "ruled that [appellant's] motions should be granted without prej-

udice to the [Government's] right to apply, on notice, for leave to file another or further Declaration of Taking and another or further amended petition in condemnation." The order declared (1) that the first declaration of taking was "unauthorized and insufficient to vest title in the United States of America to any of the lands and property therein described, and was and is of no effect"; (2) that the judgment entered on that declaration was "vacated, set aside and quashed"; (3) that the second declaration was likewise unauthorized and ineffective; (4) that the petition in condemnation and the amended petition were dismissed "but without prejudice to the filing of a new or amended petition herein"; and (5) that, "notwithstanding the foregoing rulings, this cause shall be considered to be pending," and the deposits of $8,968.00 should be retained in court (R. 75–79). The Government excepted to the order (R. 78; and see R. 207).

On the day the foregoing order was made, i. e., on November 12, 1943, the United States filed a third declaration of taking (R. 82–85). It took a fee to the lands described in the second declaration (R. 84, 85), and declared that estimated just compensation was the sum of $8,968.00, previously deposited in the court (R. 85). As authority for the acquisition, it relied, not only on the Acts of June 4, 1897, as amended, and July 1, 1941 (cited in the previous declarations), but also the Act of November 9, 1921, c. 119, 42 Stat. 212, 218, 23 U. S. C. secs. 1–25, the Act of September 5, 1940, c. 715, 54 Stat. 867; the Act of July 12, 1943,

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c. 215, 57 Stat. 392, 415, the Act of July 13, 1943, c. 236, 57 Stat. 560, and supplementary and amendatory statutes (R. 82).[1] Thereafter, on May 1, 1944, the United States filed its Second Amended Petition in Condemnation (R. 92–97) which conformed to the declaration of taking filed on November 12, 1943. Appellant on November 24, 1943, had moved to quash this declaration of taking on the ground that it failed to show statutory authority to acquire (R. 86–88). The United States now moved for entry of judgment thereon (R. 98). On May 23, 1944, after extended argument (R. 184–226) the court entered an order which (1) granted the Government's motion for judgment on the third declaration of taking, (2) granted leave to file the second amended petition in condemnation, (3) denied appellant's motion to quash that declaration and (4) on its own motion modified its order of November 12, 1943, "by vacating and setting aside any and all parts of said order which may be interpreted as denying the authority of the Secretary of Agriculture to condemn land in the manner and for the purposes set forth in the original and amended petitions in condemnation on file herein at the time of the entry of said order" (R. 99–101). Pursuant to that order, the court at the same time entered judgment on the third declaration of taking (R. 108–113). The judgment recited that the United States was entitled to acquire the property under all the statutes

[1] On October 29, 1943, during the argument which resulted in the order of November 12, 1943, the Government "presented" a Second Amended Petition in Condemnation (R. 134). It seems not to have been filed and is not in the record. It was "withdrawn" thereafter (R. 164).

recited in the declaration (R. 109). It adjudged that the possession taken pursuant to the first declaration of taking was confirmed as of the date it was taken and granted immediate possession of the remainder of the property (R. 112). Appellant's appeal from the judgment (R. 117) was dismissed by this Court on the ground it was not final (R. 236–237) *Polson Logging Co.* v. *United States,* 149 F. 2d 877.[2]

By an order entered September 24, 1945, the court ruled that value should be determined as of October 22, 1943, excluding the value of improvements made by the Government between February 5, 1942, and October 22, 1943 (R. 253). And at the commencement of the trial on November 12, 1945, the court ruled that the burden of proof was upon the Government (R. 335–336). The facts and evidence as they appeared at the trial may be summarized as follows:

The property in suit consists of a system of logging roads in the Humptulips River basin, Grays Harbor County, Washington, extending from the Olympic Peninsula Highway (U. S. 101) in the eastern part of Township 21 North, Range 10 West, Willamette Meridian, northeasterly across Township 21 North, Range 9 West, to the Olympic National Forest (R. 63). The bulk of the surrounding land is owned by appellant (R. 620–621), who logged it between 1918 and 1939 except for about 400 acres of timber of sorts that would not have been profitable to log at that time

[2] Subsequently appellant reiterated its claim that the taking was not authorized by moving to quash the declaration of taking and to vacate the judgment entered thereon (R. 250) and by its answer (R. 259).

(R. 489, 520–521). That logged-over land is now held by appellant as part of an 84,000 acre "tree farm" or reforestation area (R. 621, 642). Much of the present road system was originally constructed by appellant as a logging railroad (R. 356, 585–588) beginning about 1916 (R. 613). The rails and ties were removed about 1939, when appellant had completed profitable logging of the surrounding area (R. 613).

A Mr. A. M. Abel, who owned a half-section of timber in the Olympic National Forest, made an arrangement with appellant in February 1939, by which he was allowed to convert the abandoned railroad bed into a truck road and log his timber over it at a charge of fifty cents per thousand board feet of timber hauled (R. 468–470). In the following April he assigned that contract to the M. & D. Timber Company, and under it logging was completed not only of Mr. Abel's land but also of most of the privately owned timber in the Humptulips River basin, which the M. & D. Company bought for that purpose (R. 468–470). The M. & D. Company then began to buy timber in the Olympic Forest, but appellant secured an injunction against removal of that timber over the roads (R. 475, 481–482), apparently on the ground that it was not within the terms of the contract with A. M. Abel. The M. & D. Company thereupon began a suit to condemn the right-of-way, but when the present suit was begun by the United States, the company discontinued its action and instead used the road under a license from the United States. It continued that use until November 1943 when the district court set aside its

judgment on the declaration of taking in this case (R. 479). Appellant has since filed suit against the M. & D. Company for $28,000.00 damages for its hauling of logs under its license from the United States (R. 479, 482).

The road was impassable when the M. & D. Company began work on it in 1939 (R. 453). Appellant has spent no money on it since then (R. 483); the M. & D. Company spent $12,000.00 or $15,000.00 to deck the bridges and put the road in shape (R. 454, 483), and an additional $1,500.00 or more to repair the bridges after receiving its license from the United States in 1942 (R. 476). Several of the bridges were in very bad condition in 1942, and the United States has spent $38,178.00 on repair or replacement of bridges and improvements of the road (R. 370). Completion of the contemplated improvements will cost a further $49,340.00 (R. 370).

The Government presented four expert appraisers who took the view that the best use of the land taken was for reforestation and a trail for fire prevention and that for such uses the value was $1.00 to $1.50 per acre or $273.96 to $410.94 (R. 437–439, 493–495, 518, 535, 536). Appellant took the position that the best of the property taken was as a logging road. Evidence based upon a prospect of such use to remove timber from the national forest on the theory that, while other routes could be used for removal of the national forest timber, this road was the best route therefor was excluded (see e. g. R. 751–752). However, evidence was admitted as to tolls appellant had received from use of the road (R. 637–638). In addition, Blair McGilli-

cudy, a witness for appellant, estimated cost of reproduction less depreciation to be $194,014.38 (R. 690).[3] However, he testified he would not advise purchase of the road at anywhere near that amount if the purchaser owned less than five million feet of timber immediately adjacent to the road (R. 717). Another witness for appellant estimated value of the road, excluding consideration of any timber in the national forest, to be $200,000.00 (R. 729–730, 734, 742).

The court instructed the jury that it should value the land by taking into consideration all of the uses for which the property is reasonably suitable (R. 761); that it was for the jury to determine whether the highest and best use was for growing timber as the Government contended (R. 763); and that special value to the Government should not be considered (R. 764, 767–768). The jury returned a verdict for $6,500.00 (R. 289). After appellant's motion for new trial was denied (R. 297), judgment was entered on December 19, 1945 (R. 298) and this appeal followed (R. 306).

ARGUMENT

I

The condemnation proceedings were properly authorized by Congress

The second amended petition in condemnation describes the purpose of the proceeding as follows (R. 93–94):

[3] His opinion of value of the road (R. 695) was later stricken (R. 698, 703) insofar as it rested on the possibility of hauling timber out of the national forest, but the court denied the Government's motion to strike his estimate of cost of reproduction (R. 705).

* * * to provide for the construction, maintenance, and use of a highway, logging railroad, logging road, skidway, and landing ground purposes, and for ingress and egress, to Olympic National Forest over which to remove the dead, mature, and large growth of trees, timber products, and other products upon and from said Forest, especially Sitka spruce being used in connection with the manufacture of airplanes by the Government and our allies, and transportation of said timber, timber products, and other products, and persons and material, to practical points for the manufacture and marketing of said timber and timber products, and in the administration, conservation, preservation and protection of said Forest, and prevention and extinguishment of fires therein, or adjacent thereto, and for use as a permanent highway for all said purposes, and for the use of the people of the United States generally for all lawful and proper purposes, having regard to the geographical, topographical and other conditions of said Forest, and lands in the vicinity thereof, which affect the welfare, safety and preservation of the Forest. Said lands are declared necessary for all of said purposes, and for all such other purposes and uses, including the use of the people of the United States visiting said Forest for business, health, recreation and enjoyment, as are, or may be, authorized by Congress, or by Executive Order, or by the Department of Agriculture, not inconsistent with the administration of said Olympic National Forest, and all thereof are required for immediate use by the United States of America, and such selection, designa-

tion and determination ever since have been and now are in full force and effect.

(See also R. 4, 14, 16, 45, 48, 60–61, 80, 83).

Appellant does not, and cannot, deny that the taking of land for these purposes is a taking for public use. Thus, no issue as to constitutional power is presented here but simply a question of authority of the Secretary of Agriculture to acquire land for a proper purpose. Moreover, appellant recognizes (Br. 50–51) that the Act of August 1, 1888, c. 728, 25 Stat. 357, 40 U. S. C. sec. 257 authorizes condemnation "in every case in which the Secretary of the Treasury or any other officer of the Government has been or shall be, authorized to procure real estate for the erection of a public building or for other public uses." This authorization to procure real estate may be manifested by the making of an appropriation for such purpose as well as by a specific authorization to acquire. *United States* v. *North American Co.,* 253 U. S. 330, 333 (1920); *Hanson Co.* v. *United States,* 261 U. S. 581, 587 (1923); *United States* v. *Threlkeld,* 72 F. 2d 464 (C. C. A. 10, 1934), certiorari denied 293 U. S. 620 (1934); *United States* v. *Dieckmann,* 101 F. 2d 421, 424 (C. C. A. 7, 1939). The sole question in the instant case is, therefore, whether Congress authorized the Secretary of Agriculture to purchase lands for this purpose. Although estimated compensation of $8,968.00—which is more than adequate to pay the award of $6,500.00 (R. 299)—has been deposited in court, appellant asserts (Br. 56) that "there is no appropriation to pay for these lands." For reasons

to be given, we submit that, on the contrary, the Secretary of Agriculture was authorized to purchase these lands.

A. *Acquisition of this property was authorized under the Acts of June 4, 1897, and July 1, 1941.*—By the Act of June 4, 1897, c. 2, 30 Stat. 34 as amended, 16 U. S. C. secs. 473–482, 551, the Secretary of Agriculture is charged with the general administration of national forests. In *United States* v. *Threlkeld,* 72 F. 2d 464 (C. C. A. 10, 1934), certiorari denied 293 U. S. 620 (1934) the court sustained the authority of the Secretary of Agriculture to acquire privately owned lands for the purpose of use for a logging highway in connection with a national forest. The court there pointed out that it was the general policy of Congress to protect, develop and utilize the resources of the national forests and that for such purpose facilities for the transportation of persons and property are an "imperative necessity." The court said (pp. 465–466):

> * * * Realizing that necessity, Congress made a substantial appropriation for the construction and maintenance of roads, trails, bridges, fire lanes, telephone lines, cabins, fences, and other improvements necessary for the proper and economical administration, protection, and development of the forests during the fiscal year ended June 30, 1934. Act of March 3, 1933, 47 Stat. 1432, 1449. Similar appropriations have been made annually for many years. The language used is broad, and vests wide discretion in the Secretary of Agriculture

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to determine the kind, character, and location of the roads; also the nature, extent, and location of the other improvements requisite to the desired husbandry of the forests. It should be noted that the act does not provide that such roads or other improvements must be exclusively within the forests. Congress must have borne in mind that, due to geographic, topographic, and other conditions too numerous to detail, it might be expedient and advantageous to construct approach or entrance roads at strategic points or crossing privately owned land in order to provide a feasible and necessary system of egress, ingress, and transportation of persons and material. It must be presumed that Congress likewise realized that for similar reasons it might be necessary to provide tramways, logging railroads, skidways, and landing grounds on privately owned land situated within or adjacent to forests for the transportation, handling, and marketing of timber and minerals. Location, geography, topography, and industrial conditions could render it impossible to achieve these results otherwise. *It is difficult to believe that Congress intended to vest the administration of such vast and valuable estates in the Secretary of Agriculture to be preserved and utilized in the public interest without empowering him to acquire privately owned land for those essential purposes.* * * * [Italics supplied.]

The *Threlkeld* case referred to the appropriation act for the fiscal year ending June 30, 1934. Subsequently the form of Agriculture Department Appropriation Acts was changed so that the Act of July 1,

1941, c. 267, 55 Stat. 408, which is the Department of Agriculture Appropriation Act for the fiscal year ending June 30, 1942, under the subheading "Forest Service" appropriated funds:

> National forest protection and management: For the administration, protection, use, maintenance, improvement, and development of the national forests, including the establishment and maintenance of forest tree nurseries, including the procurement of tree seed and nursery stock by purchase, production, or otherwise, seeding and tree planting and the care of plantations and young growth; the maintenance and operation of aerial fire control by contract or otherwise; the maintenance of roads and trails and the construction and maintenance of all other improvements necessary for the proper and economical administration, protection, development, and use of the national forests, including experimental areas under Forest Service administration; * * *; and all expenses necessary for the use, maintenance, improvement, protection, and general administration of the national forests, including lands under contract for purchase or for the acquisition of which condemnation proceedings have been instituted under the Act of March 1, 1911 (16 U. S. C. 521), and the Act of June 7, 1924 (16 U. S. C. 471, 499, 505, 564–570), lands transferred by authority of the Secretary of Agriculture from the Resettlement Administration to the Forest Service, and lands transferred to the Forest Service under authority of the Bankhead-Jones Farm Tenant Act, $11,050,411, * * *.

Appellant relies (Br. 58–60) on the fact that the word construction is not used in the reference to road and trails in the 1941 Act and argues that thereby Congress intended to deprive the Secretary of Agriculture of authority to acquire lands for roads. But this argument ignores the further provision of the same section which includes "all expenses necessary for the use, maintenance, improvement, protection and general administration of the national forests". Clearly, as the court reasoned in the *Threlkeld* case, the grant of these general powers of administration and of authority to spend funds for such purposes empowered the Secretary to acquire privately owned land for these essential purposes. Cf. *United States ex rel. T. V. A.* v. *Welch,* 90 L. Ed. Adv. Op. (1946). Moreover, the legislative materials make it clear that in changing the language Congress had no intention of denying the power to construct roads.

The Appropriation Act for the Department of Agriculture for the fiscal year ending June 30, 1935, Act of March 26, 1934, c. 89, 48 Stat. 467, 482, omitted the appropriation for improvement of national forests which, as pointed out in the *Threlkeld* case (*supra*) had been made for many years. The Appropriations Committee of the House stated, "These eliminations have been compensated for by allotments from Public Works and other emergency funds" H. Rep. No. 820, 73rd Cong. 2d Sess., pp. 10–11. In the following year, by the Act of May 17, 1935, c. 131, 49 Stat. 247, 262, funds for these various items were again included in the Agriculture Department Appro-

priation. In so doing the language of the appropriation for the Forest Service was completely revised as compared to the form of the 1933 and earlier acts. In this process of rewriting the word "construction" was omitted when referring to roads and trails. The House Committee stated with reference to the appropriations for the Forest Service in the 1935 Act, "The Budget increase contemplates the discontinuance of the emergency funds under this item and the restoration of the regular appropriation." H. Rep. No. 385, 74th Cong. 1st sess., p. 8. There is nothing to indicate that the change of language was intended to curtail the operations of the Secretary of Agriculture and to deny him any authority to open new roads and trails.

Since 1935 the language of the Forest Service appropriation has remained substantially the same.[4] During this time, the Forest Service exercised the same powers to construct necessary roads, trails and bridges as it did in earlier years and Congress was informed of these actions. Thus, in the Annual Report of the Secretary of Agriculture for 1936 it was stated (p. 114) "Also completed were improvements on 22 miles of flood-damaged highways, on 236 miles of forest highways, and on 436 miles of highways through other public lands built by the Bureau of Public Roads, and 5,684 miles of forest roads and

[4] Act of June 4, 1936, c. 489, 49 Stat. 1421, 1437; Act of June 29, 1937, c. 404, 50 Stat. 359, 411; Act of June 16, 1938, c. 464, 52 Stat. 710, 726; Act of June 30, 1939, c. 253, 53 Stat. 939, 955; Act of June 25, 1940, c. 421, 54 Stat. 532, 546; Act of July 1, 1941, c. 267, 55 Stat. 408, 422; Act of July 22, 1942, c. 516, 56 Stat. 664; 680.

1,965 miles of trails built by the Forest Service."[5] It was further stated that the current program included 716 miles of forest highways. The 1937 Annual Report stated (p. 113) "Also, the construction of 139 miles of forest highways supervised by the Bureau of Public Roads, of 3,328 miles of forest development roads, of 1,540 miles of forest trails, and of 115 miles of minor forest highways handled by the Forest Service was completed." It further stated, in discussing the current program, "In addition many miles of forest roads and trails are being constructed and improved by the Forest Service." In the 1938 Annual Report, it is said (p. 157) "The roads built in the national forests and parks, in the Indian reservations, and on western public lands, are essential to the development and care of Federal reservations." In the 1943 Annual Report it was stated (p. 180):

> At the request of the Public Roads Administration and the War Production Board, the Forest Service undertook 103 construction projects during the year involving 1,200 miles of road to make accessible timber and minerals needed for war purposes. Thirty-eight of these access roads were to open up timber areas; 65 were to facilitate the operation of mines. Meanwhile only a minimum of maintenance has been done to keep in serviceable condition the existing roads and trails required for protection and administration of the national forests. Considerable construction, im-

[5] For the convenience of the court, more complete excerpts from these annual reports are set out in the appendix, *infra*, pp. 38–43.

> provement, and maintenance work will therefore be necessary after the war to bring the road and trail system to a satisfactory standard.

Thus, in the period of several years since the change of language in 1935, the Forest Service has exercised the same broad powers to construct roads that it exercised prior to that date. The annual reports were, of course, submitted to Congress which was thereby advised of the administrative practice and it continued to make the appropriations every year in the same language. In *Brooks* v. *Dewar,* 313 U. S. 354 (1941) with reference to a similar situation, the court said (p. 361):

> The repeated appropriations of the proceeds of the fees thus covered, and to be covered, into the Treasury, not only confirms the departmental construction of the statute, but constitutes a ratification of the action of the Secretary as the agent of Congress in the administration of the Act.

Since the sole question here is whether Congress has authorized the Secretary of Agriculture to construct roads giving access to national forests (*supra,* p. 12), the Congressional ratification of the administrative view that such power did exist is, we submit, conclusive. This result is confirmed by the fact that, as stated in the *Threlkeld* case (*supra*) and by the Secretary in his Annual Report for 1938 (*supra*), the construction of roads is an "imperative necessity" for proper development and utilization of the resources of the national forests. Knowing this fact, Congress did not, at any time, deny the existence of

the authority. As the court below said, the statute "certainly confers upon the petitioner herein not only the right but the duty to see that, if it be essential, a way of ingress and egress is provided so that the products of this great National asset may be utilized by the Nation, as a whole, and by the people directly interested in the lumbering activity" (R. 211; see also R. 222). Thus, we submit that the construction of roads was "necessary for the use, maintenance, improvement, protection, and general administration of the national forests" and that, since Congress has ratified the administrative construction to that effect, appellant's claim that such power does not exist is plainly erroneous.

B. *The United States has not waived its right to rely upon the 1897 and 1941 Acts.*—Relying upon the rulings of the court below prior to its orders of May 23, 1944, which sustained the Government's authority to condemn (R. 91, 99–101, 108–113), appellant argues that the Government cannot now rely upon the 1897 and 1941 Acts. This contention takes various forms. It is said (Br. 53, 62) that the court's order of November 12, 1943 (R. 75) became the law of the case; that such order became final and that the court lacked jurisdiction to set it aside as provided in its order of May 23, 1944 (Br. 73–80, R. 100–101). These arguments are founded upon the erroneous notion that the order of November 12, 1943, was final and appealable (Br. 75).

The order of November 12, 1943, declared that the two declarations of taking were not authorized (R. 77), vacated the judgment on declaration of taking

entered January 23, 1942 (R. 77), and dismissed the petition "but without prejudice to the filing of a new or amended petition herein" (R. 78). These provisions would seem to indicate that a final judgment of dismissal had been entered. But the order further provided "that notwithstanding the foregoing rulings and orders, this cause shall be considered to be pending and the $8,280.00" deposited with the first declaration of taking "and the $688.00" deposited with the second declaration of taking "shall be retained and held by the Clerk of the Court pending further order of this court" (R. 78). Thus, rather than dismissing the proceeding, the order specifically held it pending and retained the amount deposited. "A 'final decision' generally is one which ends the litigation on the merits and leaves nothing for the court to do but execute the judgment." *Catlin* v. *United States,* 324 U. S. 229, 233 (1945). Here the court has simply sustained a motion to dismiss or a demurrer while specifically refusing to dismiss the action. Such an order is not final and appealable. *Tee-Hit-Ton Tribe of Tlingit Indians of Alaska* v. *Olson,* 144 F. 2d 347 (C. C. A. 9, 1944); *Wright* v. *Gibson,* 128 F. 2d 865, 866 (C. C. A. 9, 1942); 10 *Cyclopedia of Federal Procedure* (2d ed. 1943), sec. 4901, p. 288, n. 66. Since the order was merely interlocutory and not final, the court had jurisdiction at a subsequent term to set it aside. 8 *Cyclopedia of Federal Procedure* (2d ed. 1943), sec. 3597, pp. 341–342. Moreover, even if the proceeding had been dismissed, it would have been without prejudice (R. 78) and hence would not have been *res judicata* of the Government's claim.

It is clear that there was no waiver of the Government's right to rely upon the statutes cited in the first and second declarations of taking and the original petition in condemnation. Exceptions were allowed to the Government from the order of November 12, 1943 (R. 78) and those statutes were again relied upon in the second amended petition in condemnation filed May 23, 1944 (R. 92–97). Nothing further could have been done to protect the Government's rights. Cf. *United States* v. *0.44 of An Acre of Land, etc.,* 156 F. 2d 650, 653 (C. C. A. 3, 1946). It is plain, therefore, the Government is entitled to rely upon the 1897 and 1941 Acts as authority for the condemnation in the instant case.

C. *In any event acquisition of this property was authorized by the Federal Highway Act as amended by the Act of July 13, 1943, c. 236, 57 Stat. 560.*—The Federal Highway Act of November 9, 1921, c. 119, 42 Stat. 212, 218, 23 U. S. C., secs. 1–25, provided for administration of highway matters by the Secretary of Agriculture. Section 23 (a) of the Federal Highway Act, 23 U. S. C. sec. 23 (a) provides:

> Fifty per centum, but not to exceed $3,000,000 for any one fiscal year, of the appropriation made or that may hereafter be made for the survey, construction, reconstruction, and maintenance of forest roads and trails shall be expended under the direct supervision of the Secretary of Agriculture in the survey, construction, reconstruction, and maintenance of roads and trails of primary importance for the protection, administration, and utilization of the national

> forests, or when necessary, for the use and development of the resources upon which communities within or adjacent to the national forests are dependent, and shall be apportioned among the several States, Alaska, and Puerto Rico by the Secretary of Agriculture, according to the relative needs of the various national forests, taking into consideration the existing transportation facilities, value of timber, or other resources served, relative fire danger, and comparative difficulties of road and trail construction.[6]

However, this provision as it existed until 1943 would not support the condemnation in the instant case because section 2 of the Act (23 U. S. C. sec. 2) originally provided that "The term 'construction' means the supervising, inspecting, actual building, and all expenses incidental to the construction of a highway except locating, surveying, mapping, and costs of rights of way." The situation was changed, however, by the Act of July 13, 1943, c. 236, 57 Stat. 560, which provided:

> That the definition of the term construction in section 2 of the Federal Highway Act approved November 9, 1921 (42 Stat. 212), is hereby amended to read as follows: "The term 'construction' means the surveying, inspecting, actual building, and all expenses, including the costs of rights-of-way incidental to the construction of a highway, except locating, surveying and mapping.

[6] "The term 'forest roads' means roads wholly or partly within or adjacent to and serving the national forests." Section 2 of Federal Highway Act, 23 U. S. C., sec. 2.

Thus, the Secretary of Agriculture is authorized to construct roads giving access to national forests including, after the 1943 amendment, the providing of the necessary right of way. Being so authorized, he was empowered to acquire the necessary lands by condemnation (*supra,* p. 12). The Department of Agriculture Appropriation Act which was signed July 12, 1943, provided funds "For carrying out the provisions of Section 23 of the Federal Highway Act approved November 9, 1921 (23 U. S. C. 23)" [7] 57 Stat. 392, 415. The amendment to the Federal Highway Act was approved by the President one day later, on July 13, 1943. Relying upon this one-day difference, appellant argues (Br. 67–69) that the Appropriation Act did not embrace the broader purposes of the amended Highway Act. But this is not a case of one statute adopting the substantive provisions of other existing legislation. The Appropriation Act simply made funds available for the fiscal year ending June 30, 1944. The two acts are in *pari materia* since they deal with the same subject matter Since they were enacted at the same session of Congress "they are to be taken together as one law." *Wells* v. *Supervisors,* 102 U. S. 625, 632 (1880); *United States* v. *Stewart,* 311 U. S. 60, 64 (1940); 2 Sutherland, *Statutory Construction* (3rd ed. 1943), sec. 5202, pp. 537–539. Thus, it is the rule generally that statutes passed by the same session of a state legislature are to be construed together. *Dial* v. *Chatan,* 70 F. 2d 21 (C. C. A. 4, 1934); *State* v. *McBride,* 33 Idaho 124, 190 Pac. 247 (1920); *Shouse*

[7] Similar appropriations had been made in the various appropriation acts. See acts listed in footnote, *supra,* p. 17.

v. *Board of County Commissioners,* 151 Kan. 458, 99 P. 2d 779 (1940); *Donoghue* v. *Bunkley,* 25 So. 2d 61 (Ala. 1946). This rule is of special significance when applied to federal appropriation acts which make funds available for the entire fiscal year. Congress obviously intends that the funds shall be available for whatever function the Department is authorized to perform during the year. To adopt appellant's view would mean that the authority of a government department or agency could not be enlarged after the fiscal year had commenced without also enacting another appropriation bill. The rule referred to by appellant is simply one of the canons of construction which are applicable only insofar as they reflect the intent of the legislature. 2 Sutherland, *Statutory Construction* (3rd ed. 1943), secs. 4501, 5207–5209, pp. 314–316, 547–551. It is absurd to suppose that Congress intended that during 1943–1944 the funds appropriated could not be used for the purposes set out in the amended Highway Act; hence the rule relied upon by appellant is inapplicable here.

Thus, if it be assumed that the Secretary of Agriculture was not authorized to acquire land for purpose of an access road to the national forest prior to July 13, 1943, the amendment of the Federal Highway Act on that date granted such authority. The Act related back so as to validate the earlier taking of possession for that purpose. *Crozier* v. *Krupp,* 224 U. S. 290 (1912); *Shoshone Tribe* v. *United States,* 299 U. S. 476, 494–496 (1937). The court below, therefore,

acted correctly in confirming the previous taking of possession (R. 112), after the second amended petition was filed. Appellant's attack upon this ruling (Br. 73–80) is based upon the assumption that the earlier judgment was *res judicata.* Thus, referring to the Declaration of Taking Act, appellant asserts that the court could not require it to surrender possession prior to November 12, 1943 (Br. 78–79). But the first declaration of taking was filed January 21, 1942 (R. 16–18) and the second on October 22, 1943 (R. 60–63). Since, as we have shown (*supra,* pp. 20–22) the United States is not estopped to rely upon the earlier proceedings, the assertion lacks merit.[8] Moreover, the Declaration of Taking Act simply establishes a procedure ancillary to the main suit which may be invoked by the Government if it so desires. *Catlin* v. *United States,* 324 U. S. 229, 240 (1945). It is not the exclusive means by which possession may be obtained in advance of final judgment. The court may order the surrender of possession in the absence of statute providing therefor. *Commercial Station Post Office* v. *United States,* 48 F. 2d 183, 185 (C. C. A. 8, 1931). Thus, the court was authorized to confirm the prior possession.

In this connection, appellant complains (Br. 79) of the ruling of the district court that value should be determined on October 22, 1943, the date of filing the second declaration of taking. It argues that there was no effective taking until November 12, 1943. But

[8] The amendment made on September 18, 1945, to which appellant refers (Br. 77) was made merely to correct an inadvertent omission of one course in the description (R. 246–247).

in *11,000 Acres of Land, Etc.,* v. *United States,* 152 F. 2d 566 (C. C. A. 5, 1945), certiorari denied April 29, 1946, the court said:

> We regard it as well settled that, either where no declaration of taking is filed or where, as here, the declaration of taking is filed on a date subsequent to the actual passing of possession, the market value of the property taken should be determined as of the date possession was acquired.[9]

It would, therefore, have been plain error to determine value as of November 12, 1943, as appellant asks. Moreover, no attempt is made to show that value of the property had changed nor is reference made to any other fact indicating that appellant was prejudiced by this alleged error.

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[9] Taking this view, the Government contended in the court below that the date of valuation was February 5, 1942, when possession was taken (R. 254). The court below, however, ruled that the proper date was October 22, 1943, but the value of any improvements placed upon the property by the Government in the meantime should be disregarded. The record shows that no such improvements were made (R. 174, 564) and appellant makes no mention of this portion of the ruling. The court below apparently selected the October date because at that time the Government changed the estate sought to be condemned from an easement to a fee title (R. 57). This change made little practical difference and was done in order to avoid any question as to the right to dismantle and reconstruct bridges (R. 176). It is not believed that this change affected the proper date of valuation. Cf. *Bank of Edenton* v. *United States*, 152 F. 2d 251 (C. C. A. 4, 1945). However, since the difference in dates made no difference in value (R. 568–569, 572, 573, 574) and the October amendment introduced additional parcels (R. 54), the Government has made no complaint of this ruling.

D. *The condemnation of lands to supply gravel for the road was authorized.*—By the amended petition of October 22, 1943 and the amended declaration of taking filed that date, the Government included in the land taken Tract No. 2 containing 10 acres (R. 54) and Tract No. 3 containing 90 acres (R. 54). These tracts were taken for use as a source of gravel for improvement of the roads to be built or maintained on the other lands taken (R. 225–226, 507, 567–568). Since the Agriculture Department was authorized to build and maintain this road, it was obviously empowered to obtain the necessary material for that purpose. This is an essential part of maintenance of the road and is necessary "for the use, maintenance, improvement, protection and general administration" of the national forest. The furnishing of materials is an incident to building and maintaining the road just as it is an incident to construction of an airport (*Cameron Development Co.* v. *United States,* 145 F. 2d 209 (C. C. A. 5, 1944)) or of a dam (*United States* v. *Rayno,* 136 F. 2d 376 (C. C. A. 1, 1943); cf. *United States ex rel. T. V. A.* v. *Welch,* 90 L. Ed. Adv. Op. (1946)). Rather than restricting the authority of the Secretary of Agriculture, the statutes gave broad authority to the Secretary so that he could accomplish the stated purpose.

Appellant contends (Br. 72) that this is simply an attempt to enlarge the boundaries of the national forest. This argument is based on the assertion the lands were only useful for growing trees. The testimony was that the lands were valuable in private

ownership for this purpose (R. 506). They had no market value for gravel purposes since almost all lands in the vicinity contained gravel (R. 507). Cf. *Cameron Development Co.* v. *United States,* 145 F. 2d 209 (C. C. A. 5, 1944). Thus, the inference appellant draws is contrary to the evidence. While appellant says (Br. 73) that "the Government offered no testimony that these lands are gravel-bearing", the Government witness stated that the tracts did contain gravel and that "there is some right along the road, you can see it, sir" (R. 507).

II

The trial court's rulings on the issue of compensation were correct

Appellant complains of various rulings excluding evidence offered by it during the trial. All these rulings related to appellant's theory that the highest and best use of the property taken was for logging-road purposes for the removal of timber from the national forest (Br. 95).[10] The exclusion of this consideration was, we submit, correct for two reasons.

A. *The needs of the Government could not be considered in determining value.*—Appellant complains (Br. 94) of the court's instruction to the jury that

[10] Appellant makes no claim here that there was sufficient timber in the area owned by private persons other than appellant so as to give these lands value as a logging road. The witnesses recognized that practically all such timber had already been logged (R. 469, 472–473, 520, 695–696, 699) and, as the district court ruled, it was speculative whether appellant could collect tolls upon the removal of timber owned by others (R. 553, 729).

"Potential uses of this property cannot be considered by you insofar as they apply to or depend upon any uses to which the Government itself may put the property after having acquired it" (R. 763). The court's instructions made it clear that it was simply special value to the Government that should be excluded. The court charged (R. 767):

> You should not consider the need, if any, of the government for the property taken, nor the value of such property to the government upon its acquisition. However, if you find that this property here has a special utility or availability value not only to the government, but to others, then such utility or availability value should be considered by you in connection with what you find a purchaser would pay for the property.

In *United States* v. *Miller,* 317 U. S. 369 (1943) the court said (p. 375):

> Since the owner is to receive no more than indemnity for his loss, his award cannot be enhanced by any gain to the taker. Thus, although the market value of the property is to be fixed with due consideration of all its available uses, its special value to the condemnor as distinguished from others who may or may not possess the power to condemn, must be excluded as an element of value.

The only difference in substance between appellant's requested instructions No. 3, No. 8 and No. 13, which were refused (Br. 13–16) and the instructions actually given (R. 761–768) was that the latter directed the jury to exclude special value to the taker.

Clearly, refusal so to direct would have been plain error and appellant's objections to the charge given (Br. 16–20) and to the refusal to give the requested instructions (Br. 13–16) lack merit.

For the same reason, appellant's objections to rulings excluding evidence (Br. 20–27, 28–48) were correctly overruled. In *United States* v. *Rayno,* 136 F. 2d 376 (C. C. A. 1, 1943) where the Government condemned land to provide material required for a dam the court held that the Government's need for the material must be disregarded in determining compensation. Similarly in *Cameron Development Co.* v. *United States,* 145 F. 2d 209 (C. C. A. 5, 1944) the court sustained the exclusion of evidence of value of shell marl which the Government used in constructing airport runways, there being no showing that it had commercial value to others. As the court said in *United States* v. *Foster,* 131 F. 2d 3, 6 (C. C. A. 8, 1942), certiorari denied 318 U. S. 767 (1943), "The necessities of the public cannot be taken into consideration in fixing the value of property taken." See also *Olson* v. *United States,* 292 U. S. 246, 256, 261 (1934); *United States* v. *Chandler-Dunbar Co.,* 229 U. S. 53, 61 (1915).

There is no substance to appellant's disclaimer (Br. 80) of an attempt to recover the peculiar value to the Government of the property. Thus, this is not a case where appellant's property has been enhanced for general purposes because it adjoins Government property. The entire basis for the claim is that the road has special value because it would be used for

transporting the Government timber. This is precisely the same as the claim for "strategic value" which was rejected in *United States* v. *Chandler-Dunbar Co.,* 229 U. S. 53, 80–81 (1913) where the court said:

> A "strategic" value might be realized by a price fixed by the necessities of one person buying from another, free to sell or refuse as the price suited. But in a condemnation proceeding the value of the property to the Government for its particular use is not a criterion.

Thus, appellant here is not entitled to rely upon the alleged probability that arrangements would be made with the Government whereby its timber would be removed over this road. Cf. *United States ex rel. T. V. A.* v. *Powelson,* 319 U. S. 266 (1943). "The owners ought not to gain by speculating on probable increase in value due to the Government's activities." *United States* v. *Miller,* 317 U. S. 369, 377 (1943). But that is precisely what appellant seeks to do here since its entire claim rests upon the prospect that the timber "would be sold to private loggers, and that in ordinary experience and probability, that timber would be removed to market over the road that is under condemnation" (R. 700–701). In other words, that arrangements would be made with the Government whereby its timber would be removed over this road.

It is clear that if the United States cut and removed the timber itself, appellant's claim would represent an attempt to base value solely on the needs of the Government. Certainly no different result follows if it is assumed, as does appellant, that the

Government would accomplish the same result by selling its timber to private loggers who would remove it. In either event, the claim is based solely on the Government's need to dispose of timber in the Olympic National Forest.

B. *Appellant's proffered evidence was properly rejected because it was based upon speculation.*—It is well settled that "Value cannot be placed upon a remote possibility." *Mayor and City Council of Baltimore* v. *United States,* 147 F. 2d 786, 788 (C. C. A. 4, 1945); *People of Puerto Rico* v. *United States,* 132 F. 2d 220 (C. C. A. 1, 1942), certiorari denied 319 U. S. 752 (1943). As the court said in *Olson* v. *United States,* 292 U. S. 246, 257 (1934):

> Elements affecting value that depend upon events or combinations of occurrences which, while within the realm of possibility, are not fairly shown to be reasonably probable, should be excluded from consideration, for that would be to allow mere speculation and conjecture to become a guide for the ascertainment of value—a thing to be condemned in business transactions as well as in judicial ascertainment of truth.

It is, of course, true that the road was physically adaptable for use as a logging road. But whether the demand for such use was sufficient to create a market value for that purpose is an entirely different question. Clearly, the combination of occurrences by which appellant sought to establish a probability of such use, while possible, are not shown to be reasonably probable.

In the first place, it is assumed that timber will be cut in the national forest at the rate of twenty million feet a year (R. 701–702). The entire process fails if this assumption is erroneous or even if it substantially overestimates the volume of timber to be removed. Appellant asserts (Br. 97) that error was committed in refusing evidence offered to show that it was reasonably probable that the road taken would be used for the purpose of removing timber from the national forest. But whether such timber would be cut would depend upon future governmental policy. The nearest approach to an offer of facts, rather than the mere opinion of witnesses, was the attempt to show that officials of the Forest Service had stated a policy and intention to cut 20,000,000 feet a year (R. 748–753). But such statements obviously could not commit the Government, whose future program would depend upon the conservation policies applied to national forests. As the court below said (R. 543): "I do hold specifically that he is not entitled to have the jury consider what he might have been able to collect in tolls as the years went by and the Government sold its timber. One reason that I thus hold is that it is a speculative matter. The whole policy of the Forest Service might completely change" (R. 543; see also R. 698, 752).

The second assumption involved in the process is that the timber would all be removed over this road. The only basis therefor was the assertion that this road was the best route for national forest timber (R. 751). The offers of proof themselves admitted that there

were other routes which could be developed to remove this timber (R. 702, 751). The fact that the Government has condemned this road for this purpose does not indicate that no other route is available. Nor could it be assumed that other routes would not be used. As the court below said (R. 752) "that it is contingent, that may or may not happen, that it is remote and speculative" (R. 752).

Finally, appellant assumes that the timber would be sold in place to private loggers who would pay tolls for removing the timber on this road (R. 697). Here again the speculation is based simply on the Forest Service policy to sell to private operators (R. 672). And appellant's counsel recognized that such tolls would be paid only so long as the charges were reasonable (R. 698). Private loggers would have the alternative of other routes. Moreover, it is to be borne in mind that under local law persons beneficially interested in timber lands may condemn land for a logging road as the M. & D. Company started to do (R. 475; 3 Rem. Rev. Stat. Wash., sec. 936–1).

Thus, the only facts that are shown are that the national forest is there and the road is there.[11] The whole process by which the alleged value is reached imposes speculation upon conjecture. We submit that, as the district court ruled many times, this falls far short of showing that a prospect of demand existed for

[11] The fact that the Government has taken this land in order to remove timber does not indicate the extent to which it will be so used in peacetime for, as the record shows, an important factor was the harvesting of sitka spruce for the manufacture of airplanes "by the Government and our allies" (R. 45, 93).

such use in the reasonably near future so as to affect the market value of land while it was privately held. *Olson* v. *United States,* 292 U. S. 246, 255 (1934). As the court said in *Chicago, M. & St. P. Ry. Co.* v. *Alexander,* 47 Wash. 131, 91 Pac. 626, 629 (1907) "it is not intended that owners of property may recover excessive damages based upon fictitious, visionary or remote contingencies, which may or may not at some indefinite time in the future increase the value of the land."

A case directly in point is *Meskill & Columbia C. R. Co.* v. *Luedinghaus,* 78 Wash. 366, 139 Pac. 52 (1914) where a right-of-way for a logging road was condemned through a canyon (see R. 698). An offer "to show the value of the property taken for the purpose of a toll or public logging road, based upon the assumption that all the logs from the watershed of Hope Creek would eventually pass down this canyon, as they claimed it was the most available outlet" was refused on the ground the evidence was too remote and speculative. This exclusion was affirmed on appeal, the court saying (p. 368):

> * * * The timber upon the watershed of Hope creek was owned by other parties. When it would be logged, and in what manner and by what route the logs would be transported, were matters which were contingent upon the will of the owners alone. This being true, the value, if any, which the logging of that particular land might add to the value of the land in Hope creek canyon would be remote and speculative. * * *

And in *King County* v. *Joyce,* 96 Wash. 520, 165 Pac. 399 (1917) a similar result was reached, the court stating (p. 402):

> The possible sale of a right of way or an abandoned railroad grade to one who may, at some future time, negotiate therefor, is a pleasing hope, but we find no reason or authority for holding it be a convertible asset.

So also, in the instant case, the possibility of obtaining tolls from timber moving from the national forest over this road is a "pleasing hope" but not a "convertible asset."

CONCLUSION

For the foregoing reasons it is submitted that the judgment below should be affirmed.

Respectfully,

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APPENDIX

The Annual Report of the Secretary of Agriculture for the Year 1936

[pp. 113–114]

ROAD CONSTRUCTION

Road construction administered by the Department during the year included work on the main through highways, the construction of secondary roads reaching into farming areas, extensions of the main system into and through municipalities, the improvement of roads in Federal areas, and the elimination of railroad-highway grade crossings.

A total of 27,373 miles of highways, roads, and trails, and 310 grade crossing structures were brought to completion during the year. Of this mileage, 22,133 was improved with Federal funds administered solely by the Department. The remainder consisted of 204 miles of national-park roads built for the National Park Service by the Bureau of Public Roads; 2,319 miles of loan-and-grant projects of the Public Works Administration, also supervised by the Bureau of Public Roads; and 2,718 miles in work-relief projects, the labor on which was supplied by the Federal Emergency Relief Administration. Other costs connected with these projects were paid with Public Works funds, and supervision was furnished by the Bureau of Public Roads and several State highway departments.

The major activity of the Department in road construction consisted of the administration of funds

provided as direct grants to the States for relief of unemployment through highway and grade crossing work and as Federal aid to the States for highway purposes. The work was carried on cooperatively with the various State highway departments in accordance with the general plan of administration of Federal aid for highways, but modified to meet the need of giving employment to those on relief rolls.

Work of this kind resulted in the completion during the year of 13,789 miles of roads and streets—7,355 miles on the Federal-aid highway system outside of cities, 755 miles on city extensions of the Federal-aid system, and 5,679 miles of secondary or feeder roads. On these classes of highways combined there were completed 310 railroad-highway grade-separation structures. Also completed were improvements on 22 miles of flood-damaged highways, on 236 miles of forest highways, and on 436 miles of highways through other public lands built by the Bureau of Public Roads, and 5,684 miles of forest roads and 1,965 miles of trails built by the Forest Service.

The current program at the end of the year involved a total of 25,812 miles in all classes of projects. It comprised 10,006 miles on the Federal-aid system outside of cities, 991 miles on city extensions of the system, 7,921 miles of secondary or feeder roads, 716 miles of forest highways, 261 miles of public-lands highways, 537 miles of national-park highways, 2,478 miles of loan-and-grant projects, and 2,902 miles of work-relief roads, the last three supervised by the Bureau of Public Roads as agent for other Federal departments. The current program also included 1,664 structures separating the grades between railroads and highways.

tion during the year projects of several classes involving the improvement of 17,513 miles of road. The greater part of this work was carried on in cooperation with, and under the immediate supervision of the State highway departments. In this way, during the year, improvements were completed on 9,333 miles of the rural portion of the Federal-aid highway system, 2,037 miles of secondary or feeder roads, and 760 miles of roads and streets in municipalities. The lesser part of the work, done without substantial State cooperation, includes improvements in the national forests and parks, the reconstruction of flood-damaged roads and supervision of the construction of roads financed with funds allotted by the Public Works Administration and the Works Progress Administration. The mileage of roads improved during the year in such exclusively Federal projects aggregated 5,383. Work in the national forests was supervised both by the Bureau of Public Roads and the Forest Service. The other classes of work were supervised by the Bureau of Public Roads, acting in most instances, under interdepartmental agreements, as the engineering agency of other Federal agencies.

The secondary and feeder-road programs, financed by special appropriations which now must be matched by the States, serves to extend improvement to a considerable mileage of the more important farm-to-market roads.

The roads built in the national forests and parks, in the Indian reservations, and on western public lands, are essential to the development and care of Federal reservations. They are necessary also to permit traffic through such areas, and to give access to areas of great natural beauty.

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